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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,809

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Michael Keith Ching

4906

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08/20/2009

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EXAMINER

REESE, DAVID C

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

08/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/572,809

Applicant(s)

CHING, MICHAEL KEITH

Examiner

DAVID C. REESE

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/9/2009 has been entered. Consequently, the following is the current listing of claims in the instant application:

Status of Claims

- Claims 1-10 were canceled.
- Claims 19-30 were added.
- Claim 11 was amended.
- Claims 11-30 are pending.

Information Disclosure Statement

[1] The examiner notes that a foreign reference (GB 2422412) was submitted with the current amendment without a corresponding IDS form. To be properly considered by the examiner the reference must be cited on form PTO-1449. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609

Specification

[2] The disclosure was previously objected to for informalities. Applicant has successfully addressed these issues in the amendment filed on 7/9/2009. Accordingly, the objection(s) to the specification have been withdrawn.

Claim Objections

[3] Claim 19 is objected to because of the following informalities: in the last paragraph it is stated that the locking means comprises a grub screw (see first line); however, this is stated again in line 7 and is not necessary ("said locking means comprising said grub screw...").

Appropriate correction is required.

Claim Rejections - 35 USC § 102

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 11-30 are rejected under 35 U.S.C. 102(b) as anticipated by Brushaber, US-4,645,422, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 1, Brushaber discloses of an apparatus for preventing removal of, or tampering with, a construction fitting comprising:

a body portion (50);

a fastener (22) for connecting two construction element engaging components (27, 28) to one another, said fastener comprising a bolt (22) extending between said two construction element engaging components (27, 28) and a nut (32) for tightening on said bolt (22) rigidly connecting said two construction element engaging components with a gap therebetween, said nut (32) having a first side (right side of 32) facing from said body portion (50) when said fastener is fitted for connecting said two construction element engaging components to one another and a second side (left side of 32) of said nut opposed to said first side (right side of 32).

said body portion (50) at least partially covering said nut (32) for preventing access thereto by an unfastening tool and extending from said nut to a position alongside said bolt within said gap; and,

locking means (66) movable relative to said body portion (50) between a first position, wherein said apparatus is removable from said construction fitting, and a second position wherein said apparatus is prevented from being removed from said construction fitting, said locking means (66) extending, in said second position, from said body portion in a direction toward said bolt (22) with said gap, said second side (left side of 32) of said nut (32) being received in said body portion (50) with said locking means (66) being located beyond said first side (right side of 32) of said nut (32) for rendering said nut (32) inaccessible and thereby preventing removal of, or tampering with, a construction fitting when locked (see fig. 3).

Re: Claim 12, wherein said locking means (66) is movable within a bore (38) in said body portion (32).

Re: Claim 13, wherein said locking means (66) is a screw-threaded element.

Re: Claim 14, wherein said locking means (66) is a pin lockable to said body portion (32) in said second position.

Re: Claim 15, wherein said locking means (66) is accessible and movement is effected, via a shaped tool (80).

Re: Claim 16, wherein said locking means (66) and said shaped tool (80) have respective key and keyhole elements engagable for moving said locking means from said second position to said first position.

Re: Claim 17, wherein said body portion (32) surrounds, in use, substantially all otherwise exposed surfaces of said nut (32) of said construction fitting said body portion including a bore through which a free end of said bolt extends.

Re: Claim 18, wherein said body portion (32) and said locking means (66) are made of metal.

As for Claim 19, Brushaber discloses an apparatus for preventing removal of, or tampering with, a construction fitting, comprising:

a body portion (50);

a fastener (22) for connecting two construction element engaging components (27,28) to one another, said fastener comprising a bolt extending between said two construction element engaging components and a nut (32) for tightening on said bolt rigidly connecting said two construction element engaging components with a gap therebetween, said nut (32) having a first side (right side of 32) facing away from said body portion (50) when said fastener is fitted for connecting said two construction element engaging components to one another and a second side (left side) of said nut (32) opposed to said first side (right side);

said body portion (50) at least partially covering said nut (32) for preventing access thereto by an unfastening tool and extending from said nut to a position alongside said bolt within said gap; and,

locking means (66) comprising a grub screw (66) that engages and tightens against said bolt, said locking being movable relative to said body portion between a first position, wherein said apparatus is removable from said construction fitting, and a second position wherein said apparatus is prevented from being removed from said construction fitting, said locking means extending, in said second position, from said body portion in a direction toward said bolt with said gap, said second side (left side of 32) of said nut (32) being received in said body portion (50) with said locking means (66) comprising said grub screw being located beyond said first side of said nut (right side of 32) for rendering said nut inaccessible when said grub screw is tightened against said bolt, thereby preventing removal of, or tampering with, a construction fitting when locked.

Re: Claim 19, wherein said locking means (66) is movable within a bore (98) in said body portion (50).

Re: Claim 21, wherein said locking means (66) is a screw- threaded element (66).

Re: Claim 22, wherein said locking means (66) is a pin (66) lockable to said body portion (50) in said second position.

Re: Claim 23, wherein said locking means (66) is accessible and movement is effected, via a shaped tool.

Re: Claim 24, wherein said locking means (66) and said shaped tool have respective key and keyhole elements engagable for moving said locking means from said second position to said first position.

Re: Claim 25, wherein said body portion (50) surrounds, in use, substantially all otherwise exposed surfaces of said nut (32) of said construction fitting, said body portion including a bore (56) through which a free end of said bolt extends.

Re: Claim 26, wherein said body portion (50) and said locking means (66) are made of metal.

As for Claim 27, Brushaber discloses an anti-tamper apparatus, comprising:

a nut (32) for tightening on a shank (22);

a cover (50) for at least partially covering said nut (32) for preventing access thereto by an unfastening tool; and,

locking means (66) for preventing removal of said cover (50) from a location wherein said cover at least partially covers said nut, said locking means (66) being positionable beyond said nut (32) for preventing said anti-tamper apparatus from being moved with respect to said shank for rendering said nut inaccessible, thereby preventing removal of, or tampering with, said nut when said locking means is locked.

Re: Claim 28, wherein said locking means (66) is movable within a bore (98) in said cover (50).

Re: Claim 29, wherein said locking means (66) is a screw-threaded element (66).

Re: Claim 30, wherein said locking means (66) is a pin (66) lockable to said cover (50).

Response to Arguments

[6] Applicant's amendments and arguments filed 7/9/2009 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Examiner maintains that the prior art of Brushaber as shown and disclosed above remains anticipatory towards the current, amended claim listing. Applicant's arguments concerning the prior art of Brushaber and claimed invention begin on page 13. Applicant states that Brushaber does not disclose of the locking means being located beyond the first side of the nut, along the direction of the shank of the bolt, thereby rendering the nut inaccessible to tampering by an unfastening tool. First, though the examiner disagrees with the applicant's interpretation, the examiner would first like to point out that the phrase "along the direction of the shank of the bolt" is not found in the current claim listing. To this effect, the examiner would like to remind applicant that it is the claims that define the claimed invention, and it is claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Moreover, the examiner maintains that the prior art of Brushaber does indeed disclose of said second side (left side of 32) of said nut (32) being received in said body portion (50) with said locking means (66) being located beyond said first side (right side of 32) of said nut (32) for rendering said nut (32) inaccessible and thereby preventing removal of, or tampering with, a construction fitting when locked (see fig. 3). This phrase articulates that the locking means are found beyond the first side of the nut. The examiner maintains that locking means 66 can and are indeed considered as being beyond the first side of the nut (the right side of 32). Since the locking means are found to the left of the right side of 32, they can be considered as being beyond the first side of the nut when one labels the first side of the nut 32 as the right side. Applicant is reminded that claims in

a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974), and that things clearly shown in reference patent drawings qualify as prior art features, even though unexplained by the specification. *In re Mraz*, 173 USPQ 25 (CCPA 1972).

Furthermore, the statement “thereby rendering the nut inaccessible to tampering by an unfastening tool” requires just that: the prior art must only be capable of providing for the nut to be inaccessible to tampering by an unfastening tool. Thus, since the prior art of Brushaber as shown in fig. 3 provides for the nut 32 which is covered by the cover 50 as inaccessible to a unfastening tool. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

[7] **THIS ACTION IS NON-FINAL**

[8] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached at (571) 272-6987. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David C Reesc/
Examiner, Art Unit 3677